

**(1937) 08 AHC CK 0023**

**Allahabad High Court**

**Case No:** None

Deputy Commissioner of  
Partabgarh

APPELLANT

Vs

Puran Chand Har Narain

RESPONDENT

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**Date of Decision:** Aug. 17, 1937

**Acts Referred:**

- Court of Wards Act - Section 19

**Citation:** AIR 1938 All 15

**Final Decision:** Dismissed

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### **Judgement**

1. This is a defendant's appeal arising out of a suit for recovery of Rupees 2,973-5-0 brought by the plaintiff against, the Deputy Commissioner of Partabgarh in charge of the Dhingwas Estate. The plaintiff's case was that the Rajah of Dhingwas had executed a promissory note on 1st August 1928 for Rs. 10,000 bearing interest at 12 per cent, per annum with six-monthly rests and that although the Deputy Commissioner had u/s 19, Court of Wards Act, reduced the rate of interest to 6 per cent, per annum, there had been no discharge of the claim within; the two years allowed by Section 19 of the Act and that accordingly the plaintiff was entitled to recover the whole amount at the contractual rate. The first Court dismissed the claim, but on appeal the lower Appellate Court has allowed it.

2. The facts are not in dispute. The Collector had on 20th March 1931 reduced the rate of interest from 12 per cent, per annum with six-monthly rests to 6 per cent, per annum. As required by the Proviso to Section 19(3), it was incumbent on the Collector to discharge the claim within two years of that date, namely by 20th March 1933 at the latest. Owing to some inordinate delay in making the payment, almost, the whole of that period was allowed to lapse, and on 17th March 1933 a registered packet containing a voucher on the Partabgarh Treasury was sent from Partabgarh to the plaintiff in Benares. As it was a registered packet, there was some delay in the course of the transit and the packet was not delivered to the plaintiff till 20th March

1933", the very last date allowable. Admittedly there was no time for the plaintiff to come from Benares to Partabgarh before 4 P.M. to cash the voucher. The plaintiff, however, did not refuse to accept the voucher, and on 24th March attempted to cash it by presenting it at the Partabgarh treasury. There was, however, some mistake in the endorsement made by the plaintiff with the result that the treasury refused to cash it. The plaintiff also made a demand from the defendant of Rs. 430 alleging that there had been a miscalculation in the amount of interest which was calculated on the principal sum of Rs. 10,000 and not on the sum of Rs. 13,000 and odd. There was a further mistake inasmuch as the interest had been calculated till 16th March 1933 and not till 20th March 1933 when the registered packet was delivered to the plaintiff. It is not now disputed before us that the amount of Rs. 14,789-13-0 was short by a few hundred rupees at least.

3. The learned advocate for the Deputy Commissioner has argued that the sending of the treasury voucher was a valid tender inasmuch as the plaintiff accepted it. This point may be conceded. Ordinarily, payment of money by cheque or voucher need not be a valid tender and the same may be received subject to being honoured later by the bank or the treasury. But in this case the voucher would have been cashed but for the mistake in the endorsement due to want of care on the part of the plaintiff, and it had been accepted by the plaintiff and presented at the treasury. We therefore consider that there was a tender by the defendant of the sum of Rs. 14,789-13-0 on 20th March 1933 when the voucher was accepted by the plaintiff.

4. But the provision referred to above required that if the claim is not discharged within two years, any order made under this sub-section reducing the contractual rate of interest would be deemed to be inoperative. Obviously the claim cannot be said to be discharged if there has been only a partial payment. The full amount was not paid within the two years allowed and therefore the claim had been only partially discharged and not fully discharged. The plaintiff is therefore entitled to fall back on this statutory provision and insist that the previous order of the Collector reducing the contractual rate of interest is inoperative, with the result that he can enforce his contract for the payment of interest at 12 per cent, per annum with six monthly rests. As has been laid down by their Lordships of the Privy Council in *Kishori Lal v. Collector of Etah* AIR 1934 the omission on the part of the Collector to pay the entire amount does not estop the creditor claiming the benefit of the proviso contained in Sub-section (3). The view taken by the Court below is correct. The appeal is dismissed with costs.